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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,944	01/09/2002	Vito James Carlucci	884.0051USU	5138

7590

06/27/2003

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EXAMINER

FOSTER, JIMMY G

ART UNIT

PAPER NUMBER

3728


DATE MAILED: 06/27/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No. 10/040,944	Applicant(s) Carlucci et al.	
Examiner Jimmy G. F ster	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 9-12, and 17-25 is/are rejected.
- 7) ☒ Claim(s) 6-8 and 13-16 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 6) ☐ Other:

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 3 are rejected under 35 U.S.C. § 102(b) as being anticipated by Bomeisler et al (Des. 216,349). In the reference of Bomeisler et al, there is provided a portable heater housing for hair curlers which includes plural curler/roller supports (see Fig. 2) and a lid which includes two sections that are individually hinged to the housing, as indicated in the figures of drawing. Upon closure of the lid sections, they abut/seal at a mid-line between opposed sides of the device.

3. Claims 1 and 2 are rejected under 35 U.S.C. § 102(b) as being anticipated by Montagnino et al (Des. 317,215). In the reference of Montagnino et al there is provided a hair setter, including a housing/lower part having supports for plural rollers (see Figs. 7 and 8), and including a lid having opposed hinged lid sections (see Figs. 2 and 8), hingedly attached at opposite ends.

4. Claims 1-3 and 17-23 are rejected under 35 U.S.C. § 102(b) as being anticipated by Montagnino et al (Des. 323,041). In the reference of Montagnino et al there is provided a housing for a

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hair setter, including a housing/lower portion, and a pair of opposed lid sections. The lid sections are hingedly attached at opposite ends and abut/seal along a mid-line when in the closed condition. The bottom of the lower portion is capable of supporting hair rollers. The lid sections define a handle element; accordingly, the housing is portable. On each side of the handle element the lid sections include channels that are capable of directing condensation into the reservoir/volume of the housing.

Regarding claims 17-23, while the claims call for the connection to a base for tilting, they do not require tilting movement with respect to the base. The bottom of the housing of Montagnino et al constitutes a base. In addition, the examiner asserts that the housing of Montagnino et al is capable of being tilted about an axis since the housing is portable.

5. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4, 5, 9-12, 24 and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Montagnino et al (Des 323,041) in view of Jensen et al (3,700,853). The reference of Jensen et al, at 7,8 and at column 1, lines 12-18 and column 2, line 65 through column 3, line 23, suggests that an enclosure

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for curlers may includes a steaming means *and* that the underside of a lid of an enclosure for curlers/rollers may include channels (pyramidal shapes 7,8) that direct/channel condensation to the reservoir of the housing/casing, for the purpose of wetting curlers/rollers in the reservoir and recirculating humidity within the enclosure. Jensen et al also suggests providing plural roller supports for providing rollers at locations to receive the condensation. This permits providing moist curlers to the hair. Accordingly, it would have been obvious in view of Jensen et al to have provided the lid of the housing of Montagnino et al with condensation channels and to have provided the housing with a steaming means and plural roller supports, for the purpose of wetting the curlers/rollers and recirculating moisture within the housing.

Regarding claims 10-12 of Applicant, while the claims call for support for pivotal movement of the housing with respect to the base, there is not limitation requiring a connection between the housing and base. The bottom of the housing of Montagnino et al is provided with feet, as indicated in Figures 4-6. This suggests resting the housing on a supporting surface/base, such as a table or counter, such that it would have been obvious from the feet to have rested the housing on such a supporting surface/base. Inasmuch as the transition between the longitudinal housing sides and the housing bottom is rounded, the examiner asserts that the housing is capable of being pivoted with respect to such a supporting surface or base.

7. Claims 6-8 and 13-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten

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in independent form including all of the limitations of the base claim and any intervening claims.

8. For contacting the PTO by phone, the following contact numbers may be used:

For tracking of papers and association of papers with cases --
Customer Service. . . (703)306-5648

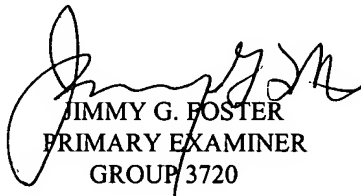
For matters regarding examination -- Examiner:
Jim Foster (703)308-1505

For faxing of correspondence:
DRAFT Fax amendments only-(703)308-7769
(Examiner should be notified of fax)

FORMAL Fax correspondence-(703)305-3579 or 305-3580

RIGHT FAX- Before Final . . (703) 872-9302
After Final . . . (703) 872-9303
(The examiner ordinarily will not retrieve
formal correspondence)

For petitions:
Before the Examiner . (703)308-1505
Before the Group Director . (703)308-3872
Other petitions . . . (703)305-9282


JIMMY G. FOSTER
PRIMARY EXAMINER
GROUP 3720

JGF
June 23, 2003